

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 03-1836**

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LUIS HERNANDO ACUNA,

Petitioner,

versus

JOHN ASHCROFT,

Respondent.

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On Petition for Review of an Order of the Board of Immigration  
Appeals. (A78-351-169)

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Submitted: January 23, 2004

Decided: February 23, 2004

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Before WILLIAMS, MOTZ, and DUNCAN, Circuit Judges.

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Petition denied by unpublished per curiam opinion.

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Ronald D. Richey, Esq. RONALD D. RICHEY & ASSOCIATES, Rockville,  
Maryland, for Petitioner. Peter D. Keisler, Assistant Attorney  
General, David V. Bernal, Assistant Director, Jamie M. Dowd, Office  
of Immigration Litigation, Civil Division, UNITED STATES DEPARTMENT  
OF JUSTICE, Washington, D.C., for Respondent.

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Unpublished opinions are not binding precedent in this circuit.  
See Local Rule 36(c).

PER CURIAM:

Luis Hernando Acuna, a native and citizen of Columbia, petitions for review of a final order of the Board of Immigration Appeals (Board) denying his motion to reopen. Acuna contends that the Board abused its discretion in denying the motion as untimely because its untimeliness was caused by ineffective assistance of counsel. See Stewart v. INS, 181 F.3d 587, 595 (4th Cir. 1999) (reviewing the Board's denial of motion to reopen for abuse of discretion).

We have reviewed the administrative record and the Board's decision and find no abuse of discretion in the Board's refusal to reopen proceedings where the motion to reopen was untimely. See 8 C.F.R. § 1003.2(a), (c)(2) (2003). In addition, we conclude that the Board did not abuse its discretion in finding that Acuna failed to establish that he was prejudiced by his counsel's alleged ineffective assistance. See Matter of Lozada, 19 I. & N. Dec. 637 (BIA 1988); Figeroa v. I.N.S., 886 F.2d 76 (4th Cir. 1989) ("To prevail on a claim of ineffective assistance of counsel at a deportation proceeding, an alien must show not only ineffective representation, but also prejudice to him which occurred as a result of that ineffectiveness"). Accordingly, we deny the petition for review. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

PETITION DENIED